

TEXAS BOARD OF CHIROPRACTIC EXAMINERS
William P. Hobby Building
333 Guadalupe, Suite 3-825
Austin, Texas 78701

MINUTES FROM THE MAY 20, 2010 BOARD MEETING

The Texas Board of Chiropractic Examiners (the Board) met in a regularly scheduled board meeting on May 20, 2010. The meeting was held in the William P. Hobby Building, Tower 2, Room 225, located at 333 Guadalupe Street, Austin, Texas 78701. A tape recording was made of the meeting. The following is a summary of the minutes from that meeting.

1. CALL TO ORDER, ROLL CALL & ESTABLISHMENT OF A QUORUM

Kenneth Perkins, D.C., President (or Presiding Officer)

Item: Call to Order, Roll Call and Establishment of a Quorum

Action Taken: Dr. Kenneth Perkins called the meeting to order at 1:00 p.m. All board members were present, as were the following staff and counsel:

1. Jeb Boyt, Assistant Attorney General
2. Glenn Parker, Executive Director
3. Hal ten Brink, General Counsel
4. Scott Parker, Director of Enforcement
5. Bill Zilar, Investigator
6. Mary Feys, Administrative Assistant for Enforcement
7. Anita Wilkerson, Administrative Assistant

2. APPROVAL OF MINUTES

Dr. Kenneth Perkins, D.C.

Item: Approval of Minutes from February 18, 2010 Board Meeting

Action Taken: The Board approved the minutes, with corrections for verb tense in some cases, but without substantial changes.

3. PUBLIC COMMENTS

Dr. Kenneth Perkins, D.C.

Item: Forum for licensees, the general public or other interested stakeholders to address the Board

Action Taken: None, there were no public comments.

4. EXECUTIVE COMMITTEE BUSINESS

Dr. Kenneth Perkins, D.C.

4.1 President's Report (*Dr. Perkins*)

Item: Dr. Kenneth Perkins may make a brief oral report to the Board on matters of current interest.

Action Taken: None.

4.2 Executive Director's Report (*Glenn Parker*)

Item: Executive Director Glenn Parker will present written and oral reports to the Board concerning recent agency activities, statistical reports, audit outcomes, revenues and expenditures, licensing information, and enforcement information.

Action Taken: None. The reports were for informational purposes only.

4.3 Consideration of draft of the 2011 – 2015 Strategic Plan for review and approval. (*Glenn Parker*)

Action Taken: None. This agenda item was postponed until the August 12, 2010 board meeting.

5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

Kathleen Summers, D.C.

5.1 The L& E Committee will make its recommendations to the Board concerning the following requests by applicants for approval to sit for the Jurisprudence Examination:

5.1.1 Applicant LeAnne Beth Martinez

5.1.2 Applicant Michael Douglas Sims

5.1.3 Applicant Stephen Ellwood Sanders

Action Taken: The Board unanimously approved the request by LeAnne Martinez to take the Jurisprudence Examination with the stipulation that, if she passes, her license will be placed on probation for 2 years (24 months) from the initial date of licensure. By a vote of 7-2, the Board deferred a decision on the request by Michael Sims until August to allow time to allow time for Mr. Sims to supply additional information to the Board. By a vote of 9-0 the Board approved the request by Stephen Sanders to sit for the Jurisprudence Examination.

5.2 Report by Dr. Patrick Thomas on the first meeting of the Board's Acupuncture Advisory Committee on April 22, 2010.

Action Taken: None. This agenda item was for information purposes only.

- 5.3 Reconsideration of the International Academy of Acupuncture's Application to Approve Acupuncture as a Chiropractic Specialty, with consideration of additional materials by Dr. Scott Isdale

Action Taken: By a vote of 9-0, the Board approved the application from the International Academy of Acupuncture for recognition as a chiropractic specialty and also approved a motion to recognize acupuncture as a chiropractic specialty by recognizing individual schools/programs as they apply. The Committee will develop a list of questions that the individual acupuncture programs must answer.

6. RULES COMMITTEE BUSINESS

Janette Kurban, D.C.

- 6.1 Consideration of Previously Proposed New Rules or Rule Amendments Eligible for Adoption

- 6.1.1 Consideration of proposed new Rule 75.23 Spinal Screening to establish requirements for DC employees, staff or agents who wish to conduct out-of-facility spinal screening. The proposed new rule was published in the January 1, 2010 edition of the *Texas Register* and is eligible for adoption at this board meeting. One comment was received in support of the proposed new rule. Consideration of this proposed rule was tabled at the February to allow time for additional comments. One comment was received in opposition to the rule after the comment period was re-opened.

Action Taken: By a vote of 9-0, the Board adopted the proposed Rule 75.23 with changes based on the revised document dated May 19, 2010 and with font size specification to be determined by staff and counsel.

- 6.1.2 Consideration of proposed amendment to Rule 75.17 Scope to specify that Vestibular-Ocular-Nystagmus Testing (VONT) is within the scope of practice for a properly trained doctors of chiropractic. The proposed rule was published in the January 22, 2010 edition of the *Texas Register* and a public formal rules hearing was conducted by the Rules Committee on April 22, 2010. The Board did receive comments and will consider all comments received prior to the hearing and at the rules hearing meeting. The board may consider re-publishing the rule with changes.

Action Taken: The Board withdrew the proposed amendment to Rule 75.17 and approved the proposal of a revised amendment to Rule 75.17 containing requirements for a diplomate plus an additional 150 hours of training for DCs wishing to perform VONT testing and rehabilitation.

- 6.1.3 Consideration of proposed amendment to Rule 71.5 Approved Chiropractic Schools and Colleges to change the definition of a “bona fide chiropractic school” as used in Subchapter G of the Chiropractic Act to mean “...a school which is accredited by a chiropractic educational accrediting body that is a member of the Councils on Chiropractic Education International.” The proposed rule amendment was published in the March 12, 2010 edition of the *Texas Register*. No comments were received on the proposed rule change.

Action Taken: The Board approved the adoption of the proposed amendment to Rule 71.5 with minor changes.

- 6.1.4 Consideration of proposed amendments to several rules (listed below) that were proposed for the purpose of correcting reference errors in the existing rules or to relocate a portion of a rule to another rule with which there is a better fit of subject matter. All the proposed amendments were published in the March 12, 2010 edition of the *Texas Register*. No comments were received on any of the proposed rules amendments.

The proposed amendments are as follows:

A. Proposed amendment to Rule 73.2 Renewal of License to add a new subsection (j) to receive a portion of a rule being transferred from Rule 80.3(g). No change in the requirements or wording of the Rule is involved, except the relocation from Rule 80.3 to Rule 73.2.

B. Proposed amendment to Rule 75.25 Impaired Licensees and Applicants to establish criteria for when the Board can require an impaired licensee or applicant to undergo mental and/or physical examination. Currently this information is contained in Rule 80.3 and the Board has determined that Rule 75.25 would be a more appropriate location.

C. Proposed amendment to Rule 76.3 Commencement of Enforcement Proceedings to correct an incorrect citation to the Administrative Procedures Act.

D. Proposed amendment to Rule 76.11 Default Judgment to correct an error concerning the size of the font required for the default judgment disclosure in notices of hearings.

E. Proposed amendment to Rule 80.3 Request for Information from Licensees to remove sections (g) and (h), which are being moved to Rule 73.2 in a separate rule amendment.

Action Taken: The Board approved the adoption of all the proposed amendments listed under Agenda Item #6.1.4 (above) with instructions to staff to bring another proposed change to Rule

75.25 at the next meeting to clarify which records are necessary in cases involving licensees whom the Board may wish to be examined for possible mental and/or physical impairment.

6.2 Consideration of Proposals for New Rules or Amendments to Existing Rules

- 6.2.1 Consideration to propose new Rule 71.4? or 71.19? or other rule number to be determined regarding issuing Eligibility Orders for prospective or currently enrolled chiropractic students to determine potential eligibility for licensure upon graduation when those students have a criminal history that may preclude them from being licensed. A new fee of \$150 for eligibility determination requests would also be proposed to be added to the fee schedule under Rule 75.7 Required Fees and Charges.

Action Taken: The Board approved the proposal of new Rule 71.19 concerning Eligibility Orders and an amendment to Rule 75.7 concerning Fees. Staff was directed to publish the proposed rule and amendment in the Texas Register for notice and comments.

6.3 Scope of Practice Questions and Issues

There are no scope-of-practice questions to be considered by the Board at this meeting.

Action Taken: None

6.4 Update on other issues under consideration by the Committee

Dr. Kurban will update the Board on other issues before the Rule Committee but the Board will not take any action on those issues.

Action Taken: None

7. **ENFORCEMENT COMMITTEE BUSINESS**

Dr. Cynthia Tays, D.C.

7.1 Consideration of SOAH Proposals for Decisions

7.1.1 Case #107-177 (Huynh)

Action Taken: After consideration of the Proposal for Decision from the State Office of administrative Hearings, the Board voted to revoke the DC license of Minh (Michael) Huynh, License #07986 and assessed an administrative penalty of \$1,000.

- 7.2 Consideration of Accepted Agreed Orders: The Board will consider approval of the following Agreed Orders that have been recommended by the Enforcement Committee and accepted by the Respondents.

- 7.2.1 Case #104-107
- 7.2.2 Case #104-337
- 7.2.3 Case #107-139
- 7.2.4 Case #107-202
- 7.2.5 Case #108-019
- 7.2.6 Case #108-066
- 7.2.7 Case #108-118
- 7.2.8 Case #109-024
- 7.2.9 Case #109-105
- 7.2.10 Case #119-117
- 7.2.11 Case #109-177
- 7.2.12 Case #109-185
- 7.2.13 Case #109-209
- 7.2.14 Case #109-220
- 7.2.15 Case #110-011
- 7.2.16 Case #110-014
- 7.2.17 Case #110-024
- 7.2.18 Case #110-036
- 7.2.19 Case #110-090
- 7.2.20 Case #110-091
- 7.2.21 Case #110-104
- 7.2.22 Case #110-110
- 7.2.23 Case #110-114
- 7.2.24 Case #110-119
- 7.2.25 Case #110-120

Action Taken: After consideration, the Board voted to approve all of the Agreed Orders for the cases listed in Agenda Items 7.2.1 – 7.2.25, above.

- 7.3 Recommendations to Approve or Deny Requests to Expunge Records

- 7.3.1 Case #101-266 Recommendation to Approve Request

Action Taken: After consideration, the Board voted to approve the request to expunge records related to Case #101-226.

- 7.4 Statutory Suspensions or Revocations for Felony Convictions and/or Imprisonment

- 7.4.1 Case #110-099 License #4497, Charles Ray Osborn

Action Taken: After consideration, the Board voted to suspend the DC license of Dr. Charles Ray Osborn for ten years, with two years down time and eight years being probated, because of his felony conviction in the 40th Judicial District Court of Ellis County, Texas.

8. EXECUTIVE SESSION

Dr. Kenneth Perkins, D.C.

The Board may meet in Executive Session for:

Consultation with counsel pursuant to Section 551.071, Government Code wherein the Board and essential staff will receive a briefing from assigned Assistant Attorney General concerning pending or contemplated litigation and settlement offers including but not limited to:

- 8.1 Texas Medical Association lawsuit against the Board
- 8.2 Vo vs. TBCE
- 8.3 TBCE vs Abbott

The Board will reconvene in open session after Executive Session to vote on items considered in Executive Session as necessary.

Action Taken: None. The Board did convene in Executive Session and discussed the above items with its legal counsel but did not take any actions after re-convening in open session.

9. CALL FOR FUTURE ITEMS for discussion and/or consideration by the Board

Dr. Kenneth Perkins, D.C.

Action Taken: None.

10. BOARD REVIEW AND PLANNING SESSION

Board members and staff will engage in an open discussion to identify issues of concern to the board and staff related to the board's mission, philosophy, operations, committee activities, opportunities for improvement, plans and anything else related to the board's fulfilling its responsibilities. Dr. Perkins may also open the floor for public input. This agenda item is intended to provide board and staff with the opportunity to discuss a wide range of issues to help the board and agency staff determine which issues need to be addressed at future board meetings, but not to make final decisions related to any of the issues discussed.

Action Taken: None. The Board conducted a review and planning session, led by Executive Director Glenn Parker for approximately 1 ½ -2 hours and discussed several subjects, but took no actions. Public input during the planning session was received from Patte Kent, Executive Director of the Texas Chiropractic Association.

11. MEETING DATES & ADJOURNMENT

Dr. Kenneth Perkins, D.C.

- 10.1 The planned Board meeting dates for Calendar Years 2010 & 2011 are:

- (1) August 12, 2010
- (2) November 4, 2010

- (4) February 10, 2011
- (5) May 19, 2011
- (6) August 11, 2011
- (7) November 17, 2011

*Note: All planned board meeting dates through 2014 may be found on the agency's website (under "Calendar") at: www.tbce.state.tx.us. All dates are tentative until posted in the Texas Register.

10.2 The next Enforcement Committee dates are scheduled for:

- (1) June 15, 2010
- (2) July 18, 2010

10.3 Adjournment at: _____ 4.00 _____ PM.

Action Taken: Dr. Perkins reminder members of the next board meeting date and adjourned the meeting at approximately 4:00 p.m.

Statement: I affirm that the above is a true and correct rendering of the minutes for the Texas Board of Chiropractic Examiners Board Meeting held on the above referenced date. These minutes from the board meeting held on May 20, 2010 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on August 12, 2010.

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners

August 12, 2010
Date